

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 20-2-2007

Coram

The Honourable Mr.Justice P.SATHASIVAM
and
The Honourable Mr.Justice N.PAUL VASANTHAKUMAR

W.A.No.463 of 2003

Tamil Nadu Film Exhibitors Association,
rep.by its General Secretary,
Mr.D.Ramanujam,
No.16, Poes Road,
3rd Street, Teynampet,
Chennai - 600 018.

... Appellant/Petitioner

Vs.

1. The Branch Manager, Film Division,
Department of Ministry of Information and Broadcasting,
Government of India, Shastri Bhavan,
Chennai - 6.

2. The Branch Manager, Film Division,
Department of Ministry of Information and Broadcasting,
Government of India,
No.70, Dhanappa Mudali Street,
Madurai.

... Respondents/Respondents

This Writ Appeal has been filed under Clause 15 of Letters Patent against the order of the learned single Judge in W.P.No.17729 of 1999 dated 22.11.2002. Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus forbearing the respondents from determining assuring and demanding the rental charges from the members of the petitioner association in respect of the short films sought to be exhibited between the period of September 1994 and July 1999 during the pendency of issue before the High Court of Delhi and the Supreme Court of India by retrospectively applying the declaratory judgment of the Supreme Court in Criminal Appeal No. 3767 to 3771 of 1999 by Judgment dated 15.7.99.

For Appellant : Mr.R.Suresh Kumar
for M/s.La Law

For Respondents : Mr.P.Wilson,
Asst. Solicitor General

J U D G M E N T

N. PAUL VASANTHAKUMAR, J.

This writ appeal is directed against the order of the learned Single Judge made in W.P.No.17729 of 1999 dated 22.11.2002 dismissing the writ petition filed by the appellant herein.

2. The brief facts necessary for disposal of this writ appeal are as follows.

(a) Appellant is a registered association of Film Exhibitors in the state of Tamil Nadu. Under section 6 of the Tamil Nadu Cinema Regulation Act, 1955, read with Rule 41(2), the exhibitors should make arrangements with the State and Central Governments, at each performance, to exhibit the short films produced by the State or Central Government. For renewal of 'C' form licence also the Exhibitors should confirm with the above regulation. The Exhibitors were paying rental charges to the respondents for exhibiting the short films as part of the condition, which is calculated as a fixed percentage of the net collection of the Cinema.

(b) The demand of the fixed rental charges by the department, according to the petitioner, is a matter of contractual obligation on the part of the film exhibitors to carry out the statutory obligation, which was not enforced between September, 1994 and July, 1999. The reason was that for identical issues, the exhibitors of the State of West Bengal, Uttar Pradesh and Delhi filed writ petitions before the concerned High Courts and Supreme Court. The Honourable Supreme Court directed that all the matters be heard by the Delhi High Court, pursuant to which, the Delhi High Court heard the matters and held that demanding charges from the exhibitors is without quid pro quo and illegal as it imposes a financial burden, for no return for the exhibitors for exhibiting the short films.

(c) The concerned State Governments filed civil appeals before the Honourable Supreme Court and the judgment of the Delhi High Court was reversed by the Supreme Court by judgment dated 15.7.1999. The contention of the petitioner is that on and from 15.7.1999 i.e, from the date of the judgment of the Supreme Court rental charges can be collected and for the earlier period i.e, from September, 1994 to July, 1999, the respondents are not justified in demanding rental charges as that period was covered by the interim orders and final orders of the Delhi High Court. As the matter was pending adjudication before the Delhi High Court, it is claimed that the respondents themselves did not enter into any agreement and collected any rental charges. After the Supreme Court order, respondents 1 and 2 issued notice to the members of the petitioner association and demanded rental charges for the relevant period, i.e, from September, 1994 to July, 1999.

(d) The said action of the respondents is challenged on the ground that the rental charges being an amount payable pursuant to

the agreement, it is neither a tax nor a fee, which is payable as a matter of course. As there is no contract to pay the rental charges and the judgment of the Honourable Supreme Court being a declaratory judgment made on 15.7.1999, it can be applied prospectively. Hence the petitioners filed the writ petition for a writ of mandamus forbearing the respondents from determining, assessing and demanding the rental charges from the members of the petitioner association in respect of the short films sought to be exhibited between the period of September, 1994 and July, 1999 during the pendency of the issue before the High Court of Delhi and Supreme Court by retrospectively applying the declaratory judgment of the Supreme Court in Civil Appeal No.3767 to 3771 of 1999 by judgment dated 15.7.1999.

3. The learned single Judge considered the claim made in the writ petition and dismissed the same by a detailed order dated 22.11.2002, against which the present writ appeal is preferred.

4. The learned counsel for the petitioner on the basis of the averments made in the affidavit, contended that the period for which the rental charges are being demanded is unjust, as no short film was given to the Film Exhibitors and the agreement was also not renewed. The learned counsel further submitted that the short films having been not supplied for the said period, the respondents are not justified in demanding rental charges and the said demand is unreasonable. Learned counsel also submitted that only after disposal of the matter by the Honourable Supreme Court, the respondents are justified in demanding rental charges and the same is paid by the members of the petitioner Association/Film Exhibitors.

5. The learned Assistant Solicitor General, appearing for the respondents submitted that supply of approved films to the Film Exhibitors for compulsory screening continued without interruption and the respondents are entitled to recover the rental for the said supply of short films. Proof of mere supply of short films to the Exhibitors is sufficient to fix liability of rental under the provisions of section 65 and section 70 of the Indian Contract Act and no written agreement is essential. The challenge made by the Film Exhibitors of other states having been not accepted by the Honourable Supreme Court, the respondents are entitled to recover the rental arrears for the disputed period i.e., 1% of the turnover of its collection for the above period. The members of the petitioner association having not chosen to pay the said rental charges in spite of rejection of similar claim by the Supreme Court. Hence demand notices were issued to pay the same. The learned counsel also submitted that the members of the petitioner association having applied for licence and obtained licence to exhibit the films, they are bound by the directions issued by the Government and the same shall be deemed to be additional condition under restriction, subject to which the licence were granted and the same is made clear under

section 6 of the Tamil Nadu Cinema Regulation Act, 1955 and Rule 41 (2). The learned counsel further submitted that the Honorable Supreme Court having dismissed the challenge by its judgment reported in (1999) 6 SCC 150 (Union of India and others v. Motion Picture Association and others), has a natural corollary that the exhibitors are bound to pay one percentage of the collection as rent as agreed earlier. Learned counsel finally submitted that similar issue with regard to payment for the same period was considered by the Andhra Pradesh High Court in W.P.No.21402 of 1999, etc., batch and upheld the right of the respondents to demand rental charges by order dated 17.7.2000 and therefore there is no illegality in the order of the learned single Judge and the writ appeal is liable to be dismissed.

6. We have considered the rival submissions made by the learned counsel for the petitioner as well as the respondents.

7. The point in issue is whether the respondents are justified in demanding rental charges for the period between 31.8.1995 to 15.7.1999 from the Exhibitors of film.

8. The liability to pay the rental charges by the Film Exhibitors for the short films supplied by the Film Division was considered by the Honourable Supreme Court in the decision reported in (1999) 6 SCC 150 (cited supra). It is not in dispute that the Film Exhibitors are bound by the directions issued by the Government from time to time and it will be treated as one of the licence conditions as per section 6 of the Tamil Nadu Cinema Regulations Act, 1955, which reads as follows,

"6. Power of Government to issue directions.

(1) The Government may, from time to time, issue directions to any licensee or to licensees generally, requiring the licensee or licensees to exhibit such film or class of films having a scientific or educative value, such films, dealing with news and current events, such documentary films, indigenous films, or such other films having special value to the public, as may have been approved by the Government in that behalf from time to time; and where any such directions have been issued, those directions shall be deemed to be additional conditions and restrictions subject to which the licence has been granted;

Provided that no direction issued under this sub Section shall require the licensee to exhibit any such film or films exceeding six hundred metres at, or for more than one-fifth of the

entire time taken for, any one show.

(2) The Government may, in the interest of the General public in the State of Tamil Nadu who speak mainly Tamil which is the official language of the State, issue directions, from time to time, to any class of licensee or to licensees generally to exhibit Tamil films for a period of not more than 9 months in a year; and where any such directions have been issued, such directions shall be deemed to be additional conditions and restrictions subject to which the licences have been granted."

Rule 41(2) of the Tamil Nadu Cinema (Regulation) Rules, 1957, also contemplates submitting of the declaration, which reads as follows,

"Rule 41(2). a declaration by the applicant to the effect that he has completed all arrangements for obtaining films approved by the State Government under Section 6 of the Act and films certified by the Central Government with the previous approval of the Central Film Advisory Board for exhibition at each performance together with a statement from the suppliers confirming that such arrangements have been made."

From the above provisions it is clear that the direction to exhibit the short films by the Exhibitors is one of the condition imposed while issuing licence to exhibit films. Once it is treated as mandatory condition contained in the licence, the appellant cannot contend that the agreement was not renewed to exhibit the said films during the said period and therefore they are not bound to pay the rental charges for the said period.

9. It is an admitted case that the agreement was not renewed due to the pendency of matter before the Delhi High Court as well as before the Honourable Supreme Court. The Supreme Court having rejected the challenge made, the Exhibitors are bound to pay the rental charges during pendency of the matter before the Court. The Supreme Court also nowhere states that the rental charges need not be collected from the Exhibitors during the period in which the matter was pending adjudication. The challenge made having been rejected, the appellant is bound to pay the rental charges as it is one of the conditions of licence to comply with the directions issued by the Government.

10. From the facts narrated in the Judgment of the Honourable Supreme Court cited supra, it could be seen that the Exhibitors are required to pay to the Film Division the rental amounting to 1% of its net weekly collection for the supply of the films and this rental remains the same for the past several decades and this rate of rental is fixed as a result of the negotiations with the Film Federation of

India and the said amount is being paid from the year 1958. The contention that there is no quid pro quo cannot be accepted as the rental cannot be treated as arrears nor tax or fee. The obligation to exhibit the films being statutory, the members of the appellant association is bound to pay the agreed amount of 1% of the net income.

11. The object of collecting the 1% of collection towards rent is explained in the Supreme Court decision reported in (1999) 6 SCC 150 (cited supra), in paragraphs 18, 19 and 29, which read thus,

"18. Undoubtedly, the exhibitors, in order to fulfil the conditions of the licence, are required to enter into an agreement with the Films Division, Government of India. This is not because of any statutory compulsion but because of the fact that the Films Division is the only organisation which produces such short films in sufficient quantities for regular distribution to the cinema exhibitors. The requirement of approval of such films is to ensure that the films, in fact, comply with the requirements specified in the statute. None of the provisions referred to make it mandatory for the exhibitors to procure such films only from the Films Division. The reason why they do so is because of a lack of adequate alternative sources.

19. The exhibitors contend that before their licence is renewed, it is necessary for them to obtain a "no-objection" certificate from the Films Division. The purpose of this is to ensure that the statutory requirements have been complied with by the licensee in the previous year. If, however, any licensee is in a position to procure such approved films from any other source, there is nothing in the statutes which prohibits him from doing so. These provisions, therefore, do not violate Article 19(1)(a) of the Constitution. They are not in restraint of free speech and expression. Therefore, Article 19(2) is not attracted.

29. The appellants, in their affidavit in reply, have pointed out that the recovery of one per cent of the net collections as a rental from the cinema owners for the supply of approved films has been in force since 1-4-1958. This rental was decided after discussions with the Films Federation of India which is the apex body of the various sections of the film industry, and it was so fixed after considering various

suggestions and representations that were received from a number of cinema organisations. The Films Division of the Government of India is incurring heavy expenditure towards production of about 125 films every year. It takes out about 400 prints of each film for distribution to the cinema theatres. The cost of production, negative/positive prints, raw stock, processing, printing, laboratory charges have all increased substantially during the last 35 years. In addition, the Films Division maintains a chain of distribution network for supply of approved films to as many as 13,000 cinema theatres spread over the various parts of the country. The films are dubbed in 15 languages to serve the interest of every region. About 50,000 film prints are to be retained in circulation at any given point of time. Maintaining such a large network of distribution of approved films throughout the year requires heavy expense to be incurred. As against all these costs, the lowest minimum rental of one per cent is being imposed and it cannot be considered as unreasonable or excessive. It is also pointed out that the Films Division incurs an expenditure of more than Rs.12 crores per year only for taking out adequate prints, while their recovery in the form of rentals is only Rs.7 to 8 crores per year. Therefore, the Films Division is charging a very small amount considering the expenditure outlay in producing and distributing these films. In these facts and circumstances, the rental of one per cent cannot be considered as excessive."

12. In fact section 6 as well as Rule 41 was challenged before this Court in the decision reported in 1990 (2) LW 57 (N.Kailasam v. The Secretary, Government of Tamil Nadu) and the same was upheld by M.Srinivasan, J. (as he then was).

13. The Andhra Pradesh High Court in the batch of cases in W.P.No.21402 of 1999, etc., batch dated 17.7.2000 also considered similar issue, particularly the consequences which followed after the judgment of the Supreme Court reported in (1999) 6 SCC 150, and upheld the claim of the respondents. The relevant portion of the Judgment reads as follows,

"But further question that calls for consideration is collection of one per cent rentals. The principal contention of the petitioners is that there is no agreement between

the parties and they have not exhibited the approved films during the relevant time and, therefore, they are not liable to pay the rentals. But this contention, though appealing, but a deep scrutiny of the legal provisions would make it clear that the contention does not hold water to sustain the arguments. The statutory requirement contemplates the exhibition of approved films. It is not the case of exhibitors that in substitution of the approved films, they have exhibited other films approved by the competent authority. It is only their case that since there was no agreement between the parties and since the approved films are not exhibited, they are not liable to pay the rentals. This does not lie on the mouth of the exhibitors in view of the provisions contained in the State Act and also the rules made thereunder with reference to the conditions imposed in the licence issued to the exhibitors. If the exhibitors contend that they have not exhibited any approved films, it would amount to violation of the terms and conditions of licence for which they are liable for penal consequences, including the cancellation of licence. But in the place of approved films, which ought to have been exhibited, if it is stated that they have exhibited other approved films though not supplied by the Film Division, then the burden lies on the exhibitors to substantiate their contention with reference to the data to be supplied by them. It is always open for the exhibitors to say that during the relevant period, they have exhibited other approved films by giving details of such approved films. It is the case of the Films Division that all the exhibitors in the State of Andhra Pradesh have been supplied with the approved films and they have also exhibited, but they have not paid one per cent rentals on account of the judgment of the Delhi High Court and now it is cleared by the judgment of the Supreme Court. In such a situation, the mandatory requirement as imposed on the exhibitors can only be discharged by satisfactorily showing that they have exhibited films other than those supplied or made available to them for exhibition by the Films Division. Thus, they cannot say that they have not violated the conditions of licence and at the same time

they cannot also say that they are not liable to pay the rentals, which are due to the Films Division."

14. The learned single Judge also considered the issue elaborately and we are in entire agreement with the said decision arrived at. We see no merit in the writ appeal and consequently the same is dismissed. No costs.

vr

Sd/
Asst. Registrar

/true copy/

Sub Asst.Registrar

To

1. The Branch Manager, Film Division,
Department of Ministry of Information and Broadcasting,
Government of India, Shastri Bhavan, Chennai - 6.
2. The Branch Manager, Film Division,
Department of Ministry of Information and Broadcasting,
Government of India, No.70, Dhanappa Mudali Street,
Madurai.

1 CC TO M/S LA LAW ADVOCATE SR 9845

1 CC TO MR.P. WILSON, ADDL.SOLICITOR GENERAL SR 9932

Judgment in

सत्यमेव जयते W.A.No.463 of 2003

20-2-2007

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